

REMARKS

In the official action, claims 41-50 were rejected as anticipated by Lubock Patents Nos. 6,955,641 and 6,923,754. The remaining claims under consideration, claims 53-137, were rejected as allegedly failing to be fully supported by the specification. The Examiner stated that the aspect in the claims relating to a vacuum port to allow for a vacuum to be applied to conform the body cavity to the treatment member is not supported in that "Applicant's specification fails to disclose any teaching of using a vacuum."

These rejections are respectfully traversed. First, taking claims 53-137, the specification does indeed disclose using a vacuum. Original claim 44, as one example, describes an applicator with a balloon having surface relief means to provide channels to allow flow of liquids from the surgical cavity toward the exit of the surgical cavity, and with the applicator's flexible shaft having a drain channel adapted to an aspirator to draw off liquids. "Adapted to an aspirator" necessarily means a port on the drain channel to receive the aspirator. An aspirator, as defined in almost any dictionary, is "an apparatus employing suction"; or "an instrument for removing body fluids by suction". "Suction" is "vacuum", and claim 44, taken in conjunction with the drawings and the remainder of the

specification, clearly discloses applying suction or vacuum to an applicator port to withdraw fluids by suction via the surface relief means or channels on the exterior of the balloon. By withdrawing such fluids, which are the only matter between the balloon and the cavity tissue, this by definition brings the body cavity tissue into contact with the exterior of the balloon, thus conforming the applicator balloon to the body cavity surface.

Moreover, pages 14-15 of the specification, in describing the balloon applicator (specific embodiments of which are shown at Figures 22-30, the elected species), clearly states that the applicator shaft preferably has a channel for drainage of liquids from the cavity; and that an aspirator can be connected to the end of the drainage port of the applicator and can be used when needed to withdraw liquids. The drainage port is shown at 34 in Figures 2, 3, 3A and 4.

Note that merely the drainage and collection of liquids from a space between an applicator and a tissue cavity, and the collection of those liquids into a vessel exterior to the body, is not the extent of the disclosure here. The use of an aspirator to withdraw liquids is disclosed, an aspirator specifically applies vacuum in an active manner, not merely receiving drippage. The application of vacuum through an applicator channel actively pulls fluids out from the interface between the applicator balloon and the cavity tissue and this by

definition brings the balloon into contact with the tissue. The fact that this active suction is disclosed is beyond question.

Pages 24-28 of the specification describe various embodiments and drainage hole positions for the applicator such as shown in Figures 1, 2 and 4. The described holes, illustrated in Figures 23-30 along with various forms of channels or surface relief on the balloon, are described as for drainage of serum and other fluids from the interface between the balloon surface and the cavity tissue, with an applicator embodiment including ports, etc., shown in Figure 23. The earlier discussion reviewed above at pages 14-15, along with original claim 44, makes clear that the invention contemplates an aspirator connected to the drainage port for the described applicator.

All this manifestly confirms that the application clearly conveys to one of skill in the art that the inventors, at the time the application was filed, had possession of the invention claimed in claims 53-137, i.e., the invention including a brachytherapy radiation applicator including a vacuum port to allow for vacuum to be applied to withdraw fluids and therefore necessarily to conform the body cavity to the applicator. Vacuum connected to the port for this purpose is very clearly disclosed in multiple instances. Even if one starts with review of Figs. 22-30 and the discussion thereof, claim 44 and pages 14-15 very plainly disclose a specific embodiment of that same applicator

with the "surface relief means", an embodiment in which the fluids are actively withdrawn by applying suction.

Note that in the official action, page 3, paragraph 6, the Examiner states in regard to the Lubock references "In providing a vacuum to conform the body cavity the device would inherently suction out any liquids that happen to be in the body cavity." Certainly this is true and obviously the converse is true. In providing a vacuum to suction out any fluids that happen to be in the body cavity (meaning between the body cavity tissue and the applicator balloon), this will inherently conform the body cavity to the balloon because to thus conform is simply to remove whatever fluids happen to exist in the space between the body cavity and the balloon. One cannot reasonably maintain that the one cause-and-effect is true without agreeing that the converses cause-and-effect is true. They are actually the same. The suction has the effect of doing both - to withdraw fluids is to close the space, and to draw the space closed is to withdraw fluids.

Accordingly, claims 53-137 are supported by the specification and are believed allowable. The applicant has requested that an interference be declared relative to two Lubock applications (now patents), and it is submitted that an interference should go forward.

Concerning claims 41-50, the subject matter of these claims

was invented by the inventors in this application prior to the effective filing dates of the Lubock patents cited. Please see the accompanying declaration of the inventors attesting to the early invention date, which is accompanied by exhibits.

All of the claims under consideration, claims 41-50 and 53-137, are believed clearly allowable based on the above reasons and the Rule 131 declaration now submitted. All of the claims should be allowed.

If the Examiner believes any issue remains, he is asked to telephone the undersigned attorney before issuing a further action.

Respectfully submitted,



Date: April 22, 2008

Thomas M. Freiburger
Reg. No. 27,063
P.O. Box 1026
Tiburon, California 94920
Telephone: (415) 435-0240